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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,400	06/09/2005	Clyde James Barnes	PPD 50679	5701
26748 7590 03/05/2009 SYNGENTA CROP PROTECTION, INC. PATENT AND TRADEMARK DEPARTMENT 410 SWING ROAD GREENSBORO, NC 27409				
EXAMINER ARNOLD, ERNST V				
ART UNIT 1616		PAPER NUMBER		
NOTIFICATION DATE 03/05/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

department-gso.patent@syngenta.com

### Office Action Summary

**Application No.**

10/509,400

**Applicant(s)**

BARNES ET AL.

**Examiner**

ERNST V. ARNOLD

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/1/08 has been entered.

Claims 2 and 23 have been cancelled. Claims 1 and 3-22 are pending and under examination.

#### **Withdrawn rejections:**

Applicant's amendments and arguments filed 12/1/08 are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed below is herein withdrawn.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 3-22 remain/are rejected under 35 U.S.C. 103(a) as being unpatentable over Moreno et al. (US 5,324,708) in view of Wikeley (US 6,107,249) and Nielsen et al. (US 5078782 hereinafter '782) and with respect to claim 21 Nielson et al. (US 5,795,847 hereinafter '847).

Applicant claims an aqueous glyphosate concentrate composition comprising glyphosate and a poly(alkylene oxide) alkanol and a method of reducing the foaming of a glyphosate concentrate composition.

**Determination of the scope and content of the prior art**

**(MPEP 2141.01)**

Moreno et al. clearly disclose a composition comprising glyphosate isopropylammonium salt and isotridecyl alcohol polyglycol ether which would be a low foaming herbicidal composition:

**EXAMPLE II.37**

Solid glyphosate mono-ipa-salt	68.00%
Ethoxylated-nonyl-phenol	2.00%
Ethoxylated-alkylamine	4.50%
Ethoxylated fatty amine	9.60%
Isotridecyl alcohol-polyglycolether	7.30%
KCl	3.45%
1-naphthyl acetic acid	0.05%
Boric acid	0.10%

Applicant discloses that isotridecyl alcohol polyglycol ether is Genapol X080 having  $n = 8$  and represents a compound of the instant formula I in instant claim 1 (Page 9, lines 6-7).

**Moreno et al. clearly establish the concept of having a composition of glyphosate with the instantly claimed ethoxylated fatty alcohol.**

Ethoxylated nonyl phenol is an additional anti-foam and that ethoxylated fatty amine is an additional bioperformance enhancing agent. Moreno et al. disclose compositions with 0.1 to 99.9 percent of the actives (column 7, lines 23-25). Moreno et al. disclose a method of killing unwanted plants by diluting the composition with water and applying it to plants (claims 7-12). Moreno et al. disclose adding ammonium sulphate to the composition (column 8, lines 47-51). Moreno et al. disclose adding alkylpolyglycosides to the composition (column 8, line 30). Moreno et al. teach in column 23, lines 52-68;

### III.3. SOLUBILITY TESTS

#### III.3.1

Table IV illustrates some solubility values of the mono-isopropylammonium salts and di-isopropylammonium salts of N-(phosphonomethyl)-glycine on the basis of which the processes according to our invention can be reduced to practice. All solvents or solvent-mixtures can be used for our processes which show a reasonable solubility—difference between the salts and products that have to be separated.

TABLE IV

solvent	SOLUBILITY g/liter		glyphosate**
	mono-IPA* salt	di-IPA* salt	
water	1470	1980	12

Clearly, Moreno et al. teach making concentrated aqueous solutions of glyphosate on the basis of which the processes according to the invention can be reduced to practice. The Examiner knows these are concentrated solutions because the amount of glyphosate in g/l is more than the amount instantly claimed. It is therefore not a stretch of the imagination to make the compositions of Moreno et al. up to the maximum solubility of the glyphosate used which of course would be concentrated aqueous solutions.

Wikeley et al. teach low foam compositions comprising glyphosate acid or salt (ammonium or alkali metal salt) with alkylglycoside surfactant and quaternary ammonium surfactants as well as a method to kill plants with the composition (column 5, lines 1-9; column 2, lines 6-59 and claims 1-11). Wikeley teaches glyphosate in the amount of 50 to 500 g/L (column 5, lines 10-15). The

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alkylglycoside is present from 20 parts by weight per 100 parts by weight glyphosate to 100 parts by weight per 100 parts by weight glyphosate (claim 9).

Nielson et al. '847 teach glyphosate and ammonium sulfate compositions comprising 5-60% ammonium sulfate by weight as well as a C<sub>12</sub>-C<sub>15</sub> alkylalcohol ethoxylated with 13 oxyethylene units (Genapol OX-130) and alkylglycosides (Claims 1-13; and column 10, line 23 to column 12, line 14). Nielson et al. teach that the non-ionic surfactants may be selected from among such which are ethoxylated, propoxylated or co-ethoxylated/propoxylated surfactants (column 10, line 57 through column 11, line 10).

Nielsen et al. '782 teaches a pesticidal concentrate composition with 1-55% by weight of a solid or liquid pesticidal component, which can be glyphosate, 20-90% by weight of an oily component, and 1-45% by weight of surfactants (claims 1 and 48). The non-ionic surfactant can be ethoxylated, propoxylated and co-ethoxylated/propoxylated fatty alcohols (claim 25, 53, 54 and 58). The degree of ethoxylation can be from 3-14 oxyethylene units and the alky group for the fatty alcohol comprises from 6-20 carbon atoms (column 23, lines 4-20).

#### **Ascertainment of the difference between the prior art and the claims**

##### **(MPEP 2141.02)**

1. Moreno et al. do not expressly teach a composition comprising 1-20 g/l of polyethoxylated alkanol; 80 to 250 g/l of the bioperformance adjuvant; 400-500 g/l to 340-380 g/l or the limitation of 240 to 550 g/l glyphosate in the method of reducing the foaming of glyphosate concentrates. Wikeley and Nielsen et al. '782

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cure these deficiencies in Moreno et al. by providing basic guidelines on the amount of glyphosate; the amount of surfactant and the amount of alkylglycoside.

2. Moreno et al. do not expressly teach a composition comprising 80 to 140 g/l ammonium sulfate or non-ionic surfactants with poly(propylene oxide) or mixed poly(ethylene oxide/propylene oxide) group. This deficiency in Moreno et al. is cured by the teachings of Nielson et al. '847.

### **Finding of prima facie obviousness**

#### **Rational and Motivation (MPEP 2142-2143)**

1. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make the composition of Moreno et al. with a 1-20 g/l of polyethoxylated alkanol; 80 to 250 g/l of the bioperformance adjuvant; and 400-500 g/l glyphosate or the narrower limitation of 340-380 g/l glyphosate or the limitation of 240 to 550 g/l glyphosate in the method of reducing the foaming of glyphosate concentrates, as suggested by Wikeley and Nielsen et al. '782, and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Moreno et al. teach broadly glyphosate solutions up to a solubility of 1980 g/l for the di-isopropyl amine salt (column 23, line 68) but not the instantly claimed amount and Wikeley cures this deficiency by providing a basic guideline of how much glyphosate in g/l should be present for one of ordinary skill in the art to follow. Nielsen et al. '782 provide guidance on the amount of surfactant to add to glyphosate concentrate solutions. To arrive at the amount of glyphosate,



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bioperformance adjuvant, polyethoxylated alkanol and other additives is merely routine optimization of the composition by one of ordinary skill in the art. It is the Examiner's position that mixing the solution of Moreno et al. intrinsically would reduce the foam of glyphosate.

2. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make the composition of Moreno et al. with 80 to 140 g/l of ammonium sulfate or with nonionic surfactants with poly(propylene oxide) or mixed poly(ethylene oxide/propylene oxide) group as suggested by Nielson et al. and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Moreno et al. teach adding ammonium sulfate and ethoxylated fatty alcohols and Nielson et al. provide guidelines on how much to add as well as the types of ethoxylated/propoxylated fatty alcohols. It is then merely a matter of judicious selection and routine optimization by one of ordinary skill in the art to arrive at the instantly claimed amounts in the absence of evidence to the contrary.

A reference is good not only for what it teaches by direct anticipation but also for what one of ordinary skill in the art might reasonably infer from the teachings. (*In re Opprecht* 12 USPQ 2d 1235, 1236 (Fed Cir. 1989); *In re Bode* 193 USPQ 12 (CCPA) 1976).

In light of the forgoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a).

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

**Response to arguments:**

Applicant asserts that Moreno et al. is directed to solid compositions and not the instantly claimed aqueous glyphosate concentrate. The Examiner respectfully disagrees. Moreno et al. clearly teach making concentrated solutions of glyphosate in their solubility tests which show 1470 g/l of the mono-IPA salt of glyphosate and 1980 g/l of the di-IPA salt of glyphosate dissolved in water. Moreno et al. clearly teach that this forms the basis of which the processes according to their invention can be reduced to practice. Moreno et al. teach the instantly components as a solid composition and it is not a stretch of logic or reason to dissolve up to the maximum amount of glyphosate, for example up to 1980 g of the di-IPA salt in 1 liter of water and have the corresponding wt% of the other ingredients to make a concentrated aqueous solution. MPEP 2141.03 states (in part), "A person of ordinary skill in the art is also a person of ordinary creativity, not an automaton." *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 167 LEd2d 705, 82 USPQ2d 1385, 1397 (2007).

Furthermore, all the elements claimed are also known in the art and would be expected to function as expected. Glyphosate functions as glyphosate and

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isotridecyl alcohol polyglycol ether functions as isotridecyl alcohol polyglycol ether. All Applicant has done is assemble known elements in the art into one composition. **This is relevant to commercial success not invention.** (See *ANDERSON'S-BLACK ROCK, INC., Petitioner, v. PAVEMENT SALVAGE CO.*, U.S.P.Q. 673, 396 U.S. 57, 90 S.Ct. 305, 24 L.Ed.2d 258, 163). Applicant has not argued synergy.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 3-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen et al. (US 5078782 hereinafter '782) in view of Moreno et al. (US 5,324,708) and Wikeley (US 6,107,249) and with respect to claim 21 Nielson et al. (US 5,795,847 hereinafter '847).

Applicant claims an aqueous glyphosate concentrate composition comprising glyphosate and a poly(alkylene oxide) alkanol and a method of reducing the foaming of a glyphosate concentrate composition.

**Determination of the scope and content of the prior art**

**(MPEP 2141.01)**

Nielsen et al. '782 teaches a pesticidal concentrate composition with 1-55% by weight of a solid or liquid pesticidal component, which can be glyphosate, 20-90% by weight of an oily component, and 1-45% by weight of surfactants (Abstract; and claims 1 and 48). The non-ionic surfactant can be ethoxylated, propoxylated and co-ethoxylated/propoxylated fatty alcohols (claim 25, 53, 54 and 58). The degree of ethoxylation can be from 3-14 oxyethylene units and the alkyl group for the fatty alcohol comprises from 6-20 carbon atoms (column 23, lines 4-20). The comprising language allows for branched fatty alcohols. Alkoxyalkylamines are a component of the composition and reads on additional anti-foam agents (claims 53, 62 and 63). Mixing up the solutions of Nielsen et al. '782 intrinsically reads on a method of reducing the foaming of a glyphosate concentration composition.

Moreno et al. clearly disclose a composition comprising glyphosate isopropylammonium salt and isotridecyl alcohol polyglycol ether which would be a low foaming herbicidal composition:

**EXAMPLE II.37**

Solid glyphosate mono-ipa-salt	68.00%
Ethoxylated-nonyl-phenol	2.00%
Ethoxylated-alkylamine	4.50%
Ethoxylated fatty amine	9.60%
Isotridecyl alcohol-polyglycoether	7.30%
KCl	3.45%
1-naphthyl acetic acid	0.05%
Boric acid	0.10%

Applicant discloses that isotridecyl alcohol polyglycol ether is Genapol X080 having  $n = 8$  and represents a compound of the instant formula I in instant claim 1 (Page 9, lines 6-7).

**Moreno et al. clearly establish the concept of having a composition of glyphosate with the instantly claimed ethoxylated fatty alcohol.**

Ethoxylated nonyl phenol is an additional anti-foam and that ethoxylated fatty amine is an additional bioperformance enhancing agent. Moreno et al. disclose compositions with 0.1 to 99.9 percent of the actives (column 7, lines 23-25). Moreno et al. disclose a method of killing unwanted plants by diluting the composition with water and applying it to plants (claims 7-12). Moreno et al. disclose adding ammonium sulphate to the composition (column 8, lines 47-51). Moreno et al. disclose adding alkylpolyglycosides to the composition (column 8, line 30). Moreno et al. teach in column 23, lines 52-68;

### III.3. SOLUBILITY TESTS

#### III.3.1

Table IV illustrates some solubility values of the mono-isopropylammonium salts and di-isopropylammonium salts of N-(phosphonomethyl)-glycine on the basis of which the processes according to our invention can be reduced to practice. All solvents or solvent-mixtures can be used for our processes which show a reasonable solubility—difference between the salts and products that have to be separated.

TABLE IV

solvent	SOLUBILITY g/liter		glyphosate**
	mono-IPA* salt	di-IPA* salt	
water	1470	1980	12

Wikeley et al. teach low foam compositions comprising glyphosate acid or salt (ammonium or alkali metal salt) with alkylglycoside surfactant and quaternary ammonium surfactants as well as a method to kill plants with the composition (column 5, lines 1-9; column 2, lines 6-59 and claims 1-11). Wikeley teaches glyphosate in the amount of 50 to 500 g/L (column 5, lines 10-15). The alkylglycoside is present from 20 parts by weight per 100 parts by weight glyphosate to 100 parts by weight per 100 parts by weight glyphosate (claim 9).

Nielson et al. '847 teach glyphosate and ammonium sulfate compositions comprising 5-60% ammonium sulfate by weight as well as a C<sub>12</sub>-C<sub>15</sub> alkylalcohol ethoxylated with 13 oxyethylene units (Genapol OX-130) and alkylglycosides (Claims 1-13; and column 10, line 23 to column 12, line 14). Nielson et al. teach that the non-ionic surfactants may be selected from among such which are

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ethoxylated, propoxylated or co-ethoxylated/propoxylated surfactants (column 10, line 57 through column 11, line 10).

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

1. Nielsen et al. '782 do not expressly teach a composition comprising the exact Formula (1) of instant claim 1; 1-20 g/l of polyethoxylated alkanol; 80 to 250 g/l of the bioperformance adjuvant; 400-500 g/l to 340-380 g/l or the limitation of 240 to 550 g/l glyphosate in the method of reducing the foaming of glyphosate concentrates. Moreno et al., Wikeley, and Nielsen et al. '847 cure these deficiencies in Nielsen et al. '782 by providing the exact type of nonionic surfactant to use; the amount of surfactant and the amount of alkylglycoside.

2. Nielsen et al. '782 do not expressly teach a composition comprising 80 to 140 g/l ammonium sulfate or non-ionic surfactants with poly(propylene oxide) or mixed poly(ethylene oxide/propylene oxide) group. This deficiency in Nielsen et al. '782 is cured by the teachings of Nielson et al. '847.

**Finding of prima facie obviousness**

**Rational and Motivation (MPEP 2142-2143)**

1. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make the composition of Nielsen et al. '782 with a 1-20 g/l of polyethoxylated alkanol that is instantly claimed; 80 to 250 g/l of the bioperformance adjuvant; and 400-500 g/l glyphosate or the narrower limitation of 340-380 g/l glyphosate or the limitation of 240 to 550 g/l glyphosate

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in the method of reducing the foaming of glyphosate concentrates, as suggested by Moreno et al. and Wikeley, and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Nielsen et al. '782 teach broadly glyphosate concentrate solutions with nonionic surfactants but not the instantly claimed surfactant and Moreno et al. cure this deficiency by teaching the use of the instantly claimed nonionic surfactant in glyphosate compositions. Wikeley cures this deficiency by providing a basic guideline of how much glyphosate, and which salts to select, in g/l should be present for one of ordinary skill in the art to follow. To arrive at the amount of glyphosate, bioperformance adjuvant, polyethoxylated alkanol and other additives is merely judicious selection and routine optimization of the composition by one of ordinary skill in the art. It is the Examiner's position that mixing the solution of Nielsen et al. '782 intrinsically would reduce the foam of glyphosate.

2. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make the composition of Nielsen et al. '782 with 80 to 140 g/l of ammonium sulfate or with nonionic surfactants with poly(propylene oxide) or mixed poly(ethylene oxide/propylene oxide) group as suggested by Nielson et al. '847 and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Moreno et al. teach adding ammonium sulfate and ethoxylated fatty alcohols and Nielson et al. '847 provide guidelines on how much to add as well as the types of ethoxylated/propoxylated fatty alcohols. It is then merely a matter of judicious selection and routine optimization by one of ordinary skill in the art to



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arrive at the instantly claimed amounts in the absence of evidence to the contrary.

A reference is good not only for what it teaches by direct anticipation but also for what one of ordinary skill in the art might reasonably infer from the teachings. (*In re Opprecht* 12 USPQ 2d 1235, 1236 (Fed Cir. 1989); *In re Bode* 193 USPQ 12 (CCPA) 1976).

In light of the forgoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a).

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

### ***Conclusion***

No claims are allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5152823 teaches aqueous based herbicidal agents comprising ethoxylated fatty alcohols having a chain length of C8-C20 and an ethoxylation degree of 5-30 EO which are commercially available under the name Genapol

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(column 1, lines 29-33; column 2, lines 20-25 and claim 1). A composition of glyphosate and ethoxylated fatty alcohol is taught (compositions 11 and 12 in columns 3-4).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernst V. Arnold whose telephone number is 571-272-8509. The examiner can normally be reached on M-F (6:15 am-3:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Ernst V Arnold/

Examiner, Art Unit 1616